

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

MIDMICHIGAN GLADWIN PINES¹
Employer

and

Case 7-RC-22625

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC
Petitioner

APPEARANCES:

Robert W. Sikkel, Attorney, of Grand Rapids, Michigan, and
Jonathan P. Kok, Attorney, of Holland, Michigan, for the Employer.
William L. Laney, Jr., Lead Organizer, of Bay City, Michigan, for the Petitioner,
and **Richard G. Mack, Jr.**, Attorney, of Detroit, Michigan on Brief.

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

¹ The name of the Employer appears as corrected at the hearing.

² Briefs were filed by the parties which have been carefully considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of approximately 28 full-time, regular part-time, and casual/on-call registered nurses (RNs) and licensed practical nurses (LPNs) employed by the Employer at its facility located in Gladwin, Michigan³, but excluding guards and supervisors as defined in the Act. The Employer contends that all RNs and LPNs at the Employer's facility are supervisors within the meaning of Section 2(11) of the Act. The Petitioner contends that the RNs and LPNs are statutory employees, not supervisors. The parties stipulated that all nurses, whether RN or LPN, perform the same tasks.

I find that the Employer has not satisfied its burden of proof that the RNs and LPNs exercise any supervisory indicia enumerated in Section 2(11) of the Act, and therefore they are not supervisors as defined in the Act and are eligible to vote. They do not exercise the independent judgment required for a finding of supervisory status and any role they have in regard to discipline and the evaluation process does not, standing alone, affect the job status or tenure of other employees.

With regard to the casual/on-call RNs and LPNs, the record does not set forth the number of hours they work or the regularity of their work schedules. For on-call employees who work on a regular basis, the Board utilizes the eligibility formula set forth in *Davison-Paxton Co.*, 185 NLRB 21 (1970), and *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990). Accordingly, casual/on-call RNs and LPNs are eligible to vote in the election ordered here if they regularly average four hours or more of work per week during the quarter immediately prior to the eligibility date. The parties agreed to this eligibility formula. As I am unable to determine the regularity of the work of the casual/on-call employees based on the present record, they shall be permitted to vote under challenge.

Overview

The Employer operates a 120 bed, state licensed nursing home/long-term care facility. The average number of residents at any one time is between 110-112. The facility has six residential hallways, designated as hallways 100 through 600. There are three nurses stations responsible for the six hallways. These nurses stations are simply called A, B, and C.

³ The parties stipulated, and I find, that the RNs are professional employees as defined in the Act, and the LPNs are not professional employees.

Administrator Jeffery Ehrhardt manages the facility. The nursing department is headed by Mary Stewart, the director of nursing (DON). Nursing management also includes Jean Cameron, assistant director of nursing (ADON), and restorative RNs Sara Sisco and Cynthia Esiline. In addition, within the department is a Minimum Data Set (MDS) Coordinator, Sara Seafross, MDS Nurse, Susan Bancroft, and Staffing Coordinator, Chris Strunk⁴.

The nursing department consists of 4 full-time and regular part-time RNs, 6 casual/on-call RNs, 17 full-time and regular part-time LPNs, 1 casual/on-call LPN, 70 to 75 nursing assistants or CENAs, and 6 or 7 casual/on-call CENAs. The LPNs are referred to as LPN charge nurses by the Employer. The CENAs are represented by the Petitioner in a service and maintenance unit covered by a collective bargaining agreement.

The Employer's shifts vary among the RNs and LPNs. Some work 12-hour shifts from 6:00 a.m. to 6:00 p.m. and 6:00 p.m. to 6:00 a.m. Others work eight-hour shifts. There are three eight-hour shifts, 6:00 a.m. to 2:00 p.m., 2:00 p.m. to 10:00 p.m., and 10:00 p.m. to 6:00 a.m. CENAs also work these eight-hour shifts.

Nurses station A is the largest of the three stations. It is responsible for hallway 100 which has 21 resident beds. The nurses assigned to this station work 12-hour shifts. There are one or two nurses scheduled per shift. Additionally, the staffing coordinator, ward clerk, and medical secretaries are stationed near this area. This hallway has its own dining room for the residents on hallway 100. Nurse Station B is responsible for hallways 200 and 300. Hallway 200 has 18 resident beds, while hallway 300 has 24 resident beds. The nurses at this station also work 12-hour shifts. Usually two nurses are scheduled during the day shift and one in the evening. Nurse station C is responsible for hallways 400, 500 and 600. It is the smallest of the three stations. At station C, the nurses work eight-hour shifts and the station is usually staffed by one nurse. The dining room for the residents on hallways 200 through 600 is between Nurses stations B and C.

Each nurses station has the residents' clinical records, a desk, telephone, a room for medicine carts and necessary medications, and all necessary paperwork for the nurses. Usually, only the nurses work at these three stations, but occasionally the DON or ADON also work at them. Physicians, physical therapists and/or the MSD nurse may also work at any of the stations. The DON

⁴ The parties stipulated that Stewart, Cameron, Sisco and Esiline hold supervisory positions within the meaning of 2(11) of the Act because they exercise the authority to discipline, and assign work and direct employees in their work assignments, and so I find. Additionally, the parties stipulated that Seafross and Bancroft lack a community of interest with the unit sought by the Petitioner and I so find. Strunk is not a RN or LPN and, thus, is not in the unit(s).

and ADON share an office across from Nurses station B. The shower area for residents is next to that office.

In addition to the nurses, each hallway is staffed by nursing assistants or CENAs. During the 6:00 a.m. to 2:00 p.m. shift, there are between 13 and 16 CENAs scheduled. From 2:00 to 10:00 p.m., there are 11 or 12 CENAs scheduled. From 10 p.m. to 6 a.m., 8 to 12 CENAs are scheduled. The CENAs have been represented by the Petitioner for many years and have been subject to a series of collective bargaining agreements between the Employer and the Petitioner. The job description of the CENAs identifies their supervisors to be Licensed Nurse/ADON/DON. The job description states that CENAs report directly to a Licensed Nurse and the ADON. The contract between the Employer and Petitioner covering CENAs provides that the first step of the grievance procedure is for the CENA to take the grievance up with his “immediate supervisor.” First step grievances are taken to the ADON.

Scheduling

Scheduling is performed by Chris Strunk, staffing coordinator. She schedules the CENAs’ shifts, including their two 15-minute breaks, lunch period, and hall assignment. During their shift, if an emergency or other situation arises, nurses can tell a CENA to postpone a break or lunch. If a hallway is short-staffed during the day or afternoon shift, the nurses will notify the staffing coordinator, ADON or DON. After 6 p.m., when those individuals have left for the day, the nurses will assess the needs of the hallways and discuss with one another as to whether someone can be transferred from one hall to another. If necessary, transfers will occur. Nurses can call in CENAs to work. According to the collective bargaining agreement covering the CENAs, additional work will be offered to CENAs in the following order: part-time, regular part-time, and full-time who have indicated, in writing, an interest in working additional hours. If the Employer is unable to attain the necessary number of employees, the contract provides that employees at work may be required to work additional hours and these assignments are to be made in reverse order of seniority. The contract further provides the employees cannot refuse such work assignments unless they would incur serious inconveniences or economic loss. The record does not establish that the Employer deviates from this practice outlined in the collective bargaining agreement.

Nurses sign overtime “Request for Payment of Extra/Overtime Worked.” Once the nurse signs the sheet, she does not know what comes of it. The collective bargaining agreement covering the CENAs addresses required overtime. The following conditions are necessary to require overtime: “1) call-ins have resulted in staffing below the number required by the Michigan Department of

Consumer and Industry Services, 2) call-ins have resulted in less than acceptable staff numbers to provide quality care to residents, 3) weather conditions prohibit adequate staff from reporting to work or 4) an emergency situation requires additional staffing.” The contract further provides that management is to locate needed staff and if it is unable to do so, the outgoing shift is required to remain. The staff with the least seniority will be required to stay until relieved unless a more senior employee requests the overtime. Again, the record does not establish that the Employer deviates from this practice.

Assignments

Approximately three CENAs are assigned by the staffing coordinator to each hallway. Upon arriving at their scheduled hallway, CENAs report to the nurses station. The nurse or nurses assigned to that particular station provide the CENAs with a “CENA Worksheet.” At the top of the worksheet is a space for the nurses to fill out the name of the CENAs scheduled on a particular hallway and to what rooms those individuals are assigned. Some nurses consider the strength of the CENAs, along with the way they interact with residents and other CENAs, when assigning them to a particular room. Other nurses may simply divide the number of rooms by the number of CENAs. One nurse testified that at times she does not even fill out the worksheet. Instead, she and CENAs work together as a team.

Patient Care

CENAs work from their “CENA Worksheet.” This worksheet is derived from resident care plans. A resident care plan is a plan of care developed for residents upon admittance. It lists the problems a resident is having and the steps the facility is going to take to prevent a decline in a resident’s condition. These plans are devised by the MDS nurse, restorative nurse, and MDS coordinator, with input from the dietician, social services, nurses and CENAs. No one person decides the resident care plan. The plan is always being added to and subtracted from by any of the above individuals.

The “CENA Worksheet” is divided into six sections. The first section, “Showers”, lists the residents that will receive showers on that day. A main list, created through input from the nurses and CENAs as well as from the residents themselves, provides what day certain residents take their showers and the nurses transfer the information from that main list to the worksheet.

The second section is “Vital Signs.” Vital signs are taken when a resident is newly admitted and for residents who receive showers. The nurse determines whether vital signs need to be taken for other situations, such as when a patient is

ill, does not look well, is on antibiotics, or if a physician needs the resident's vital signs. "Supplements" is the third section of the worksheet and concerns special foods given to residents at non-meal times. The dietician determines any supplement needs. The next section is "Ambulation", which is determined by the Employer's standard of practice and/or the restoration nurse. Once the restoration nurse determines the amount of ambulation needed, it is recorded in a gray book that the nurses consult. The fifth section is "BM List" or bowel movement list that is determined by standing orders for each resident. These standing orders must be followed.

The last section of the worksheet is "Intake and Output." Intake is monitoring the amount of fluid a resident consumes in a day and the output is the urinary output for the day. There are established policies and procedures for intake and output. Residents are placed on intake and output when they are newly admitted so the facility can get their baseline levels. Additionally, if someone is on a feed tube or an IV, they automatically go on this list. The dietician may recommend a resident be monitored if there are any nutritional issues. A nurse may recommend the same if the nurse believes the resident is not drinking enough or wants to see what a resident consumes in a day. Nurses consult a "24 hour report" to get the information on who should be placed on intake and output monitoring. Additionally, the DON may leave a note for the nurses telling them to look at a lab report and suggesting that from that report a resident be put on intake and output. The nurses will then initiate the paperwork.

In addition to the information preprinted on the CENA worksheet, the nurses can add additional information, such as when a resident needs to be repositioned. This information comes from the DON, restorative nurse, or nurse. At the end of the CENAs' shift, nurses review the CENAs' worksheets to assure that they have performed all tasks required.

The Employer also maintains list of standing orders. The list from October 2003 includes 29 standing orders for residents. While nurses are responsible for all patient care, if there is a problem or condition that arises with a resident, they have this list of standing orders to consult and follow. Included in these standing orders are constipation, diarrhea and vital signs.

From approximately 6:00 p.m. until 8:00 a.m., there is no management personnel on the premises. Administrator Ehrhardt, DON Steward and ADON Cameron are always on-call by home phone, cellular phone and pager for nurses should a situation arise where a nurse needs to contact them. This has occurred when a patient alarm will not stop activating, there is a severe staffing shortage, or a CENA was injured on the job.

Discipline

All employees are to report any suspected patient abuse. Nurses can send CENAs home for the day if they suspect such abuse. CENAs cannot send other CENAs home for similar suspicions. Once suspected abuse is reported, an investigation is conducted by the DON or ADON and any discipline is handled by them. There was no evidence presented that the nurses are informed of whether any discipline is issued.

Although the Employer contends that the nurses have the authority to issue discipline to CENAs, the RN and LPN charge nurse job descriptions make no mention of the issuance of discipline to CENAs or any other employees. This job description was created in February 1999 and most recently revised in January 2004. The record establishes that most nurses only give a verbal or written report of an incident to the ADON. Various witnesses testified that nurses have the authority to tell CENAs what to do and will report to the ADON if a CENA does not do what is required of them. Once the nurse has reported this information to the ADON, there is no evidence to establish that the nurse's role goes any further. All discipline must be signed by the ADON. The nurses do not have access to any employee files and are not made aware of any disciplinary action taken by the ADON. In one instance, an LPN filled out the portion of a Corrective Action Report that summarized the facts of an incident. The ADON filled out the prior discipline portion. The LPN handed the CENA the discipline in the presence of the ADON who signed as a witness. However, the unit president for the CENAs has seen nearly 100 of these Corrective Active Reports. She has never seen one signed by a nurse, they are always signed by the ADON.⁵

Evaluations

Annual performance evaluations are given to both the nurses and CENAs. The former are completed by DON Stewart, the latter by ADON Cameron. In the nurses evaluation, there is a category titled "Supervisory Role" and it comprises 15% of the evaluation. Nurses are evaluated in that category on "supervision of the CENAs at all time", "complete work assignments for CENAs", "regular round of your assigned unit to ensure CENAs is (sic) completing work assignments," and "monitoring to assure that residents are clean and appropriately dressed." Despite this evaluation criteria, if CENAs do not perform their work assignments, nurses are not disciplined. Further, nurses whom the parties stipulated are not supervisors are evaluated on the same form.

⁵ The unit president has been on an extended absence from the Employer since June 2003, but no evidence was produced to establish that the Employer's practices in this regard have changed during her absence.

When a CENA is hired they are paired with another CENA “buddy.” Thereafter, the ADON will ask both the CENA “buddy” and the nurses how the new CENA is performing. The Employer contends that the nurses are consulted regarding both the continued employment of CENAs at the conclusion of their 90-day probationary period and regarding CENAs’ performance evaluations, especially for the CENAs who work in the evening when the ADON has left. However, the Employer presented little detail and no first-hand evidence in support of this contention and the nurses that testified stated that they have never been asked to comment on a newly hired CENA’s progress.

Analysis

Section 2(3) of the Act excludes from the definition of the term “employee” “any individual employed as a supervisor.” Section 2(3) of the Act defines a “supervisor” as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is interpreted in the disjunctive and the possession of any one of the authorities listed in that section places the employee invested with this authority in the supervisory class. *Ohio Power Company. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949); *Allen Services Co.*, 314 NLRB 1060, 1061 (1994).

In *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001), the Supreme Court upheld the Board’s longstanding rule that the burden of proving Section 2(11) supervisory status rests with the party asserting it. See *Ohio Masonic Home*, 295 NLRB 390, 393 n. 7 (1989); *Bowen of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). However, the Court rejected the Board’s interpretation of “independent judgment” in Section 2(11)’s test for supervisory status, i.e., that registered nurses will not be deemed to have used “independent judgment” when they exercise “ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards.” 532 U.S. 707. Although the Court found the Board’s interpretation of “independent judgment” in this respect to be inconsistent with the Act, it recognized that it is within the Board’s discretion to determine, within reason, what scope or degree of “independent judgment” meets the statutory threshold. See *Beverly Health & Rehabilitation Services*, 335 NLRB 635 fn. 3 (2001).

Further, the Court agreed with the Board that the term “independent judgment” is ambiguous as to the *degree* of discretion required for supervisory status and that such degree of judgment “that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer.” 532 U.S. 713-714.

In discussing the tension in the Act between the Section 2(11) definition of supervisors and the Section 2(12) definition of professionals, the Court also left open the question of the interpretation of the Section 2(11) supervisory function of “responsible direction,” noting the possibility of “distinguishing employees who direct the manner of others’ performance of discrete tasks from employees who direct other employees.” 532 U.S. 720; See *Majestic Star Casino*, 335 NLRB 407, 408 (2001). For instance, direction as to a specific and discrete task falls below the supervisory threshold if the use of independent judgment and discretion is circumscribed by the superior’s standing orders and the employer’s operating regulations, which require the individuals to contact a superior when problems or anything unusual occurs. *Dynamic Science, Inc.*, 334 NLRB 391 (2001); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

In the instant case, there is no evidence that the nurses have independent authority with respect to the hire, promotion, demotion, layoff, recall, reward, or discharge of employees. Rather, the Employer rests its claim of supervisory authority primarily upon other indicia, i.e., the alleged authority to assign and direct the work of, and call in, CENAs, suspend them for suspected abuse of a resident, discipline them, and provide input into their evaluations.

I find that the RN’s and LPN’s role in assigning and directing the work of, and calling in CENAs does not support a finding of supervisory status. With regard to the CENA worksheet, it appears that the nurses consult the shower schedule, 24-hour report, and the standing orders and policies and procedures of the Employer. Additionally, the record indicates that much of the information on the CENA worksheet is a result of the resident care plan. This plan is created by a number of different individuals, including input from nurses and CENAs. However, preparing a care plan and directing other employees to carry it out does not usually require the use of 2(11) independent judgment. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002), citing *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890, 891, 891 fn. 5 (1997), and *Ten Broeck Commons*, 320 NLRB 806, 811, 811 fn. 10 (1996).

If a CENA is doing something incorrectly, it is the nurse that steps in and tells the CENA that it is being done incorrectly and will show them the proper way to perform the task. Generally showing employees the correct way to perform a task does not confer supervisory status. *Beverly Health & Rehabilitation*

Services, supra at 669. There is no evidence that a nurse has ever been disciplined for a CENA not performing her/his job. The Employer also failed to show that the nurses' direction of the CENAs is responsible direction, which depends "on whether the alleged supervisor is held fully accountable and responsible for the performance and work product of the employees he directs." *Franklin Home Health Agency*, supra, quoting *Schnurmacher Nursing Home*, 214 F.3d 260, 267 (2d Cir. 2000).⁶

The Employer contends that the nurses authorize overtime and are able to call in employees if they decide they are short-staffed. The evidence establishes that the procedures for CENAs working both overtime and additional hours is fully outlined in the collective bargaining agreement. Once a CENA works overtime, a nurse then signs a "Request for Payment of Extra/Overtime Worked." At that point it is turned into the ADON and the CENA gets paid. In order for a CENA to work overtime, the criteria laid out in the collective bargaining agreement must be met. Once it is determined that overtime is necessary, the staffing coordinator or a nurse will call in a CENA according to the agreement. The procedure for calling in CENAs for additional hours is also outlined in the collective bargaining agreement. Such decisions essential to the needs of a resident's health and well being do not involve discretionary exercise of judgment essential to supervisory status. See *Youville Health Care Center, Inc.*, 326 NLRB 495, 496 (1998).

I also find that the RN's and LPN's role in sending home a CENA for suspected abuse of a patient does not support a finding of supervisory status. In this case, nurses are allowed to send an employee home if they suspect that employee to be abusing a patient. Once a nurse does this, it is turned over to the ADON or DON for investigation and ultimate determination as to the action that will be taken. The record is not clear as to whether this is a government policy or a policy of the Employer. Regardless, the authority of the nurses to eject an employee from the facility for extreme misconduct does not render them statutory supervisors. The taking of limited action in response to flagrant violations is insufficient by itself to establish supervisory status. *Phelps Community Medical Center*, 295 NLRB 486, 492 (1989); *Loffland Bros. Co.*, 243 NLRB 74, 75 fn.4 (1979); *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 393 (1989), enfd. 933 F.2d 626 (8th Cir. 1991) .

⁶ The Employer argues in its brief that *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571 (1994) and *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001) have almost identical facts to this case, pointing out that in those cases the nurses were found to be supervisors. What differentiates this case from those is that the nurses here do not exercise independent judgment when directing the CENAs to perform discrete tasks. In the case at hand, the nurses follow the Employer's policies and procedures, the collective bargaining agreement covering the CENAs, as well as government policies and procedures when "directing" the work of the CENAs. Additionally, the nurses are not disciplined for the CENAs' failure to complete their duties. Therefore, the nurses do not responsibly direct the work of the CENAs.

Finally, I find that the RN's and LPN's role in the disciplinary and evaluation process does not support a finding of supervisory status. The record establishes that the nurses may report incidents to the ADON, either verbally or in writing. At that point, the nurses' involvement ends. The nurses are not involved in the investigation or in the decision to issue discipline. Additionally, the nurses are not even informed if discipline is issued. Reporting incidents of employee misconduct is not supervisory if the reports do not always lead to discipline, and do not contain disciplinary recommendations. *Ten Broeck Commons*, supra at 812; *Illinois Veterans Home at Anna L.P.*, supra at 890. The Board does not find anecdotal reports or written warnings to be proof of supervisory authority unless they result in personnel action without independent investigation or review by others. *Hillhaven Rehabilitation Center*, 325 NLRB 202, 203 (1997), citing *Northcrest Nursing Homes*, 313 NLRB 491, 498 (1993). The Board has repeatedly held, with court approval, that a reportorial function is not sufficient to support a supervisory finding. *Ohio Mason Home*, supra at 393-394; *NLRB v. Attleboro Associates, Ltd.*, 176 F.3d 154, 174 (3rd Cir. 1999); *NLRB v. City Yellow Cab Co.*, 344 F.2d 575, 580-581 (6th Cir. 1965).

Annual evaluations of all nursing department employees are prepared by the DON and ADON, who meet with the employee to present and discuss the evaluation. In preparation of the evaluation of a CENA, the ADON may use information provided upon request by a nurse as to the competence of the employee, although to what extent is unknown. The record indicates that if a nurse is asked about a CENA, it mainly involves CENAs scheduled on the afternoon or midnight shift when the ADON is no longer at the facility. This minor role played by nurses in the evaluation of nursing staff is insufficient to support a supervisory finding. *Washington Nursing Home*, 321 NLRB 366, 371 (1996) and cases cited; *Lynwood Health Care Center, Minnesota, Inc. v. NLRB*, 148 F.3d 1042, 1047 (8th Cir. 1998); *New York University Medical Center V. NLRB*, 156 F.3d 405, 413 (2nd Cir. 1998). Moreover, there is no evidence that the evaluations are utilized by the Employer to affect employees' status or tenure, which fails to support a finding of supervisory status regardless of the extent of the contribution of the charge nurses to the evaluations. *Ten Broeck Commons*, supra at 813; *Bayou Manor Health Center*, 311 NLRB 955 (1993). In that regard, CENAs' wage rates and other benefits are governed by the union contract.

5. Accordingly, for the reasons stated above, and based on the record as a whole, I find the following employees of the Employer may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and casual/on-call registered nurses and licensed practical nurses employed by the Employer at its Gladwin, Michigan facility; but excluding CENAs and all other employees represented by a labor organization, guards and supervisors as defined in the Act, and all other employees.

The unit set forth above includes both professional and non-professional employees. The Board is prohibited by Section 9(b)(1) of the Act from including professional employees in a unit with non-professional employees unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professionals must be ascertained as to inclusion in a unit with non-professional employees.

I shall, therefore, direct separate elections in the following voting groups:

Voting Group A:

All full-time, regular part-time, and casual/on-call licensed practical nurses employed by the Employer at its Gladwin, Michigan facility; but excluding registered nurses, CENAs and all other employees represented by a labor organization, guards and supervisors as defined in the Act, and all other employees.

Voting Group B:

All full-time, regular part-time, and casual/on-call registered nurses employed by the Employer at its Gladwin, Michigan facility, but excluding licensed practical nurses, CENAs and all other employees represented by a labor organization, guards and supervisors as defined in the Act, and all other employees.

The employees in Voting Group A will be polled to determine whether they wish to be represented by the Petitioner.

The employees in Voting Group B will be asked the following two questions on their ballot:

(1) Do you desire to be included in a unit with licensed practical nurses of the Employer for the purposes of collective bargaining?

(2) Do you desire to be represented for the purposes of collective bargaining by United Steelworkers of America, AFL-CIO, CLC?

If a majority of the registered nurses in Voting Group B vote “yes” to the first question, indicating their wish to be included in a unit with non-professional employees, they will be so included. Their votes on the second question will then be counted together with the votes of the licensed practical nurses in Voting Group A to determine whether the employees in the overall unit wish to be represented by the Petitioner. If, on the other hand, a majority of the registered nurses in Voting Group B do not vote for inclusion, they will not be included with the non-professional employees. Their votes on the second question will then be separately counted to determine whether they wish to be represented by the Petitioner.

Thus, the unit determination is based, in part, upon the results of the election among the registered nurses. However, I make the following findings in regard to the appropriate unit:

1. If a majority of the registered nurses vote for inclusion in the unit with licensed practical nurses, I find the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and casual/on-call registered nurses and licensed practical nurses employed by the Employer at its Gladwin, Michigan facility; but excluding CENAs and all other employees represented by a labor organization, guards and supervisors as defined in the Act, and all other employees.

2. If a majority of the registered nurses do not vote for inclusion in the unit with licensed practical nurses, I find the following two groups of employees will constitute separate units appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A

All full-time, regular part-time, and casual/on-call licensed practical nurses employed by the Employer at its Gladwin, Michigan facility, but excluding registered nurses, CENAs and all other employees represented by a labor organization, guards and supervisors as defined in the Act, and all other employees.

Unit B

All full-time, regular part-time, and casual/on-call registered nurses employed by the Employer at its Gladwin, Michigan facility, but excluding licensed practical nurses, CENAS and all other employees represented by a labor organization, guards and supervisors as defined in the Act, and all other employees.

Those eligible shall vote as set forth in the attached Direction of Elections, subject to the provisions set forth above.

Dated at Detroit, Michigan, this 19th day of March 2004.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

Classifications

177 8540 8000

177 8540 8050

177 8560 0100

460 5033 7500

460 5033 7550 2000

460 5067 8200

DIRECTION OF ELECTIONS

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **March 26, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **April 2, 2004**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be stopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.